



## TEXAS DEPARTMENT OF INSURANCE

### Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645

(512) 804-4000 | F: (512) 804-4811 | (800) 252-7031 | TDI.texas.gov | @TexasTDI

## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### GENERAL INFORMATION

**Requestor Name**

SENTRIX PHARMACY AND DISCOUNT LLC

**Respondent Name**

AMERICAN ZURICH INSURANCE COMPANY

**MFDR Tracking Number**

M4-16-3844-01

**Carrier's Austin Representative**

Box Number 19

**MFDR Date Received**

August 29, 2016

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "Sentrix Pharmacy and Discount, LLC (the 'Pharmacy') requests payment for the services rendered to [the injured employee] on 5/27/16. The service rendered was the filing and dispensing of prescription medication. The claim(s) in question were properly submitted pursuant to the *Pharmaceutical Benefits* rules codified in 28 Texas Administrative Code (TAC) §134.500 through §134.550.

The insurance carrier, Zurich, failed to take final action on the claim within the 45-day period set forth in TAC § 134.240. Specifically the claim was submitted on 5/27/16 and it was received by the provider on 6/1/16 (as verified by the attached proof of delivery) and no action was taken on the claim. Sentrix made a good faith effort to notify the carrier of their failure to respond to the bill on 7/19/16 and it was received by the provider on 7/25/16 (as verified by the attached proof of delivery). Again, no action was taken on the claim."

**Amount in Dispute:** \$1,244.50

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** The respondent's position statement contains new denial reasons or defenses that were not presented to the requestor prior to the filing of a medical fee dispute. As will be explained below, the respondent has waived any such new defenses or denial reasons—which shall not be addressed in this review. The respondent is limited to those denial reasons or defenses raised by the carrier during the bill review process (*prior* to the filing of the medical fee dispute). The respondent did not submit information to support that any denial reasons or defenses were presented to the requestor before the filing of the request for medical fee dispute resolution; therefore the division finds a waiver of denial reasons. Any newly raised defenses shall not be considered.

**Response Submitted by:** Flahive, Ogden & Latson

### SUMMARY OF FINDINGS

| Dates of Service | Disputed Services                           | Amount In Dispute | Amount Due |
|------------------|---|-------------------|------------|
| May 27, 2016     | Pharmacy Services – compound drug dispensed | \$1,244.50        | \$980.98   |

## ***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

### **Background**

1. 28 Texas Administrative Code §133.307 sets out procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §133.2 defines terms related to medical billing and processing.
3. 28 Texas Administrative Code §133.240 sets out procedures for medical bill payments and denials.
4. 28 Texas Administrative Code §134.502 sets out provisions regarding pharmaceutical benefits.
5. 28 Texas Administrative Code §134.503 sets out the pharmacy fee guideline.
6. Texas Labor Code §408.027 sets out provisions regarding payment of health care providers.
7. The explanations of benefits submitted by the respondent are dated September 6, 2016. They were issued by the insurance carrier *after* the filing of the medical fee dispute request (which was received by the division on August 29, 2016). 28 Texas Administrative Code §133.307(d)(2)(F) requires that the response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review. As the submitted explanations of benefits were presented to the requestor *after* the filing of the medical fee dispute request, any such new denial reasons or defenses contained in those EOB's have thus been waived, and shall not be considered in this review. No documentation was found to support that any denial reasons or defenses had been presented to the requestor before the filing of the medical fee dispute request.

### **Issues**

1. Did the insurance carrier timely pay, reduce, deny or take final action on the services in dispute?
2. What is the recommended reimbursement for the disputed pharmacy services?
3. Is the requestor entitled to additional reimbursement?

### **Findings**

The health care provider, Sentrix Pharmacy and Discount, LLC, requested medical fee dispute resolution (MFDR) on August 29, 2016. The provider asserts that the workers' compensation insurance carrier, American Zurich Insurance Company, has not issued payment for the disputed pharmacy services provided to the injured employee on service date May 27, 2016.

1. The requestor contends that the insurance carrier "has not sent . . . any type of correspondence, EOB, or payments" for the disputed pharmacy services.

Texas Labor Code Sec. 408.027(b), requires that:

The insurance carrier must pay, reduce, deny, or determine to audit the health care provider's claim not later than the 45th day after the date of receipt by the carrier of the provider's claim.

Corresponding Rule §133.240(a) requires that:

An insurance carrier shall take final action after conducting bill review on a complete medical bill, or determine to audit the medical bill in accordance with §133.230 of this chapter (relating to Insurance Carrier Audit of a Medical Bill), not later than the 45th day after the date the insurance carrier received a complete medical bill. An insurance carrier's deadline to make or deny payment on a bill is not extended as a result of a pending request for additional documentation.

Final action on a medical bill is defined in 28 Texas Administrative Code §133.2(6) as:

- (A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement . . . and/or
- (B) denying a charge on the medical bill.

The following information supports the requester's position that the medical bills for the services in dispute were initially received by the insurance carrier or the carrier's agent:

- A copy of a certified mail receipt dated May 27, 2016 supporting that the bills were mailed to the carrier.
- Tracking documentation from the US Postal Service supporting that the insurance carrier received the initial claims submissions on June 1, 2016.
- Copy of a letter dated July 19, 2016 requesting status on the claims as well as a copy of any explanation(s) of benefits.
- Copy of a certified mail receipt supporting the letter requesting the EOB(s) was mailed on July 19, 2016.
- Tracking documentation from the US Postal Service supporting that the insurance carrier received the request for the EOB(s) on July 25, 2016.

While the submitted evidence supports the health care provider's timely submission of the medical bills to the insurance carrier, along with a request for explanations of benefits (EOBs), no information was found to support that the insurance carrier took final action or issued EOBs in accordance with the requirements of 28 Texas Administrative Code § 133.240 (a) and (e).

Rule § 133.240(a) requires that:

An insurance carrier shall take final action after conducting bill review on a complete medical bill . . . **not later than the 45<sup>th</sup> day** [emphasis added] after the insurance carrier received a complete medical bill.

Rule §133.240 (e) requires that:

The insurance carrier shall send the explanation of benefits in accordance with the elements required by §133.500 and §133.501 of this title . . . The explanation of benefits shall be sent to:

- (1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill . . .

All workers' compensation insurance carriers are expected to fulfill their duty to take final action as required by law and the division's administrative rules. The insurance carrier failed to do so in this case.

Rule §133.307(d)(2)(F) requires that:

The response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review.

Per Rule §133.307(d)(2)(F), the insurance carrier's failure to issue explanations of benefits to the health care provider constitutes grounds for the division to find a waiver of defenses at Medical Fee Dispute Resolution.

No information was found to support that before the filing of the request for medical fee dispute resolution the insurance carrier ever provided to the pharmacy any denial reasons or defenses in regards to the disputed pharmacy services that conform with the requirements of Title 28, Texas Administrative Code, Chapter 133, Subchapter C—or provisions applicable to dispensing pharmacies under Title 28, Texas Administrative Code, Chapter 134, Subchapter F. Consequently, the division finds that the respondent has waived all such denial reasons or defenses. The disputed services will therefore be reviewed for payment in accordance with applicable division rules and fee guidelines.

2. The disputed pharmacy services are in regard to the dispensing of prescription drugs with reimbursement subject to the provisions of 28 Texas Administrative Code §134.503(c), which requires that:

- (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:

- (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:

- (A) Generic drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee per prescription = reimbursement amount;

- (B) Brand name drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee per prescription = reimbursement amount;
- (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
- (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
- (A) health care provider; or
- (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider. The compound in dispute was billed by listing each drug included in the compound and calculating the charge for each drug separately as required by 28 Texas Administrative Code §134.502 (d)(2).

Reimbursement for the disputed prescription drugs is calculated as follows:

Compound dispensed May 27, 2016

| Ingredient(s)              | NDC & Type   | Unit Price | Total Units  | AWP Formula<br>§134.503(c)(1)                    | Billed Amount<br>§134.503(c)(2)     | Lesser of<br>(c)(1) or (c)(2) |
|----------------------------|--|------------|--------------|--|-------------------------------------|-------------------------------|
| SALT STABLE LS<br>ADVANCED | 395602157<br>Brand Name  | \$3.36     | 85.2         | $(\$3.36 \times 85.2) \times 1.09 =$<br>\$312.04 | \$286.24                            | \$286.24                      |
| BACLOFEN                   | 38779038808<br>Generic   | \$35.63    | 4.8          | $(\$35.63 \times 4.8) \times 1.25 =$<br>\$213.78 | \$170.99                            | \$170.99                      |
| GABAPENTIN                 | 58597801407<br>Generic   | \$62.84    | 6            | $(\$62.84 \times 6) \times 1.25 =$<br>\$471.30   | \$377.08                            | \$377.08                      |
| KETOPROFEN                 | 58597801707<br>Generic   | \$10.97    | 12           | $(\$10.97 \times 12) \times 1.25 =$<br>\$164.55  | \$131.67                            | \$131.67                      |
| AMANTADINE                 | Not in dispute—Requestor did not assert on DWC-60 Table of Disputed Services |            |              |  |                                     | \$0                           |
| AMITRIPTYLINE              | Not in dispute—Requestor did not assert on DWC-60 Table of Disputed Services |            |              |  |                                     | \$0                           |
|                            |  |            | Total Units: | 108  | Subtotal:                           | 965.98                        |
|                            |  |            |              |  | + \$15 compound fee = <b>Total:</b> | 980.98                        |

3. The maximum allowable reimbursement is \$980.98. The insurance carrier has paid \$0.00. The recommended payment is \$980.98.

### **Conclusion**

In resolving disputes regarding the amount of payment due for health care determined to be medically necessary and appropriate for treatment of a compensable injury, the role of the division is to adjudicate the payment, given the relevant statutory provisions and division rules.

The Division would like to emphasize that the findings and decision in this dispute are based on the evidence presented by the requestor and respondent available at the time of review. Even though all the evidence was not discussed, it was considered.

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$980.98.

### **ORDER**

Based on the submitted information, pursuant to Texas Labor Code Sec. 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$980.98, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

|           |  |                   |
|-----------|--|-------------------|
| _____     | Grayson Richardson                     | December 29, 2016 |
| Signature | Medical Fee Dispute Resolution Officer | Date              |

### **YOUR RIGHT TO APPEAL**

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**